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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SALVADOR GARIBAY,

Plaintiff and Appellant,

v.

CALLERY/CONWAY/MARS HV, INC.,

Defendant and Respondent.

B213687

(Los Angeles County  
Super. Ct. No. VC048953)

**ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[No Change in Judgment]**

THE COURT:

It is ordered that the opinion filed herein on May 25, 2010, be modified as follows:

**Page 14:**

Delete the third sentence of the first full paragraph; also, in the citation following that sentence, delete the words “with no discussion of subdivision (f)(1),” so that the first full paragraph now reads in its entirety:

However, it is appropriate to note that “California has a strong state policy of protecting its citizens from injuries due to defective products and has expanded successor liability in certain circumstances” (*Nelson v. Tiffany Industries, Inc.* (9th Cir. 1985) 778 F.2d 533, 534, citing *Ray v. Alad Corp.*, *supra*, 19 Cal.3d 22), and that in the context of the present case there is no federal preemption. In the present tort case, state law exceptions permitting successor liability may be litigated and are not preempted by federal bankruptcy law. (Compare *Myers v. U.S.*, *supra*, 297 B.R. at p. 784 [court found

preemption “[u]nder the facts of this case,” which involved an injury to plaintiff *prior* to bankruptcy] with *Douglas v. Stamco* (2d Cir. Feb. 1, 2001, No. 09-1390-CV) [2010 WL 337043] [applying New York state law in rejecting a successor liability claim, implicitly finding no preemption].)

This modification does not effect a change in judgment.

The Petition for Rehearing is denied.